

C. Remarks

The claims are 1-6 and 8-15, with claims 1, 3, 8, 9, 11 and 15 being independent. Claim 7 has been cancelled without prejudice or disclaimer. Claims 1, 3 and 8 have been amended to include the features of cancelled claim 7 and to correct clear typographical errors. Claim 14 has been rephrased for clarification. No new matter has been added. Reconsideration of the present claims is expressly requested.

Initially, as a formal matter, Applicants have noted that the Examiner crossed out all articles on PTO-1449 forms filed with the application on December 15, 2003. Since copies of these articles were filed in parent Application No. 10,237,174 on July 14, 2003, in accordance with the provisions of 37 C.F.R. § 1.98(d) Applicants need not resubmit them in this case in order for these documents to be considered. Therefore, the Examiner is respectfully requested to provide written confirmation that the articles listed on the PTO-1449 forms filed on December 15, 2003 have been considered.

Claims 1, 3, 7, 8 and 14 stand rejected under 35 U.S.C. § 112, second paragraph, as being allegedly indefinite.

In response, the typographical errors in claims 1, 3 and 8 have been corrected and the language in claims 7 and 14 has been clarified.¹ Accordingly, this rejection should be withdrawn.

Claims 1-15 stand rejected under the judicially created doctrine of obviousness-type double patenting over claims 7-28 of U.S. Patent No. 6,761,745 B2 (the '745 patent). The grounds of rejection are respectfully traversed.

^{1/} The clarified language from claim 7 may be found in claims 1, 3 and 8, which now include the features of claim 7.

Claims 1-15 in the present case are based on claim 30 in the parent application, which issued as the '745 patent. This claim 30 was subject to an oral restriction requirement and subsequently cancelled as a non-elected claim, as noted by the Examiner in the Interview Summary dated July 16, 2003 (Form PTOL-413; Paper No. 6) and reflected in Applicants' comments on page 12 of the Amendment filed on July 25, 2003 in the parent case. Therefore, since claims 1-15 in the present case are consonant with non-elected subject matter of claim 30 in the parent application, it is clear that 35 U.S.C. § 121 prohibits the use of the '745 patent to reject the present claims for double patenting. Accordingly, the double patenting rejection should be withdrawn.

Claims 1-3, 6 and 8 stand rejected under 35 U.S.C. § 103(a) as being allegedly obvious from U.S. Patent No. 5,688,295 (Yang). Claims 1-6 and 8 stand rejected under 35 U.S.C. § 103(a) as being allegedly obvious from U.S. Patent No. 5,697,987 (Paul).

Without acquiescence, and solely to expedite prosecution, independent claims 1, 3 and 8 have been amended to include the features of claim 7, specifying that at least about 99.5% by volume of component (b) is ethanol. Since claim 7 was not rejected by the Examiner over prior art, Applicants respectfully request that the above rejections over Yang and Paul be withdrawn.

Wherefore, in view of the foregoing amendments and remarks, expedient passage to issue of the present application is respectfully requested.

Applicants' undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our

address given below.

Respectfully submitted,

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